



Paper No. 7

JOHN F NETHERY
McAndrews Held & Malloy Ltd
34th Floor
500 W Madison Street
Chicago, IL 60661

COPY MAILED**NOV 12 2002****OFFICE OF PETITIONS**

In re Application of
Richard Michael Roffers
Application No. 09/666,000
Filed: September 20, 2000
Attorney Docket No. 15-XT-4847

:
:
:
:
:
DECISION GRANTING
PETITION

This is a decision on the "Petition to Accord Filing Date for Express Mail Correspondence Not Received by P.T.O. (37 CFR 1.10(e)," filed September 23, 2002. The petition is properly treated as a petition to withdraw the holding of abandonment.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action mailed September 13, 2001. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the Office action, with extensions of time under the provisions of 37 CFR 1.136(a) permitted. No extensions of time having been obtained and no reply timely received, the above-identified application became abandoned on December 14, 2001. A Notice of Abandonment was mailed on August 27, 2002.

In response, petitioner promptly filed the instant petition, requesting that the response to the non-final Office action, an amendment, be accorded a filing date of December 12, 2001, the date it was deposited in the USPS "Express Mail" service pursuant to the requirements of 37 C.F.R. § 1.10¹. In support of the petition, petitioner submits *inter alia*:

- the relevant "Express Mail" mailing label, showing a "date-in" of December 12, 2001;
- the originally-deposited papers (transmittal, amendment, and excess claim fee sheet), each with the "Express Mail" mailing label number thereon; and

¹ Paragraph (a) of 37 C.F.R. § 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a) (Emphasis supplied).

- the return Post Card, showing receipt of these papers in the Office by the presence of a OIPE date-stamp of December 12, 2001 and the absence of any annotation that any paper itemized on the postcard was missing.

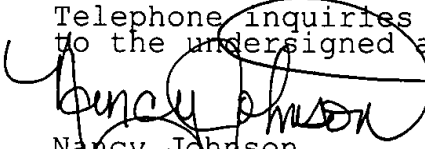
Petitioner states that the label and the papers submitted on petition are true copies of the "Express Mail" label used and of the papers as filed.

Petitioner's arguments and evidence have been considered and it is concluded that petitioner has met the requirements to show that the amendment should be considered timely filed on December 12, 2001.² The petition is granted.

Accordingly, the Notice of Abandonment mailed August 27, 2002, is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The application file is being returned to Technology Center 2882 for consideration of the amendment, resubmitted September 23, 2002 (Paper No. 6).

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² Paragraph (e) of § 1.10 provides that:
Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by Express Mail;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and if the requested filing date is a date other than the "date-in" on the "Express Mail" or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date that the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the "Express Mail" mailing label, any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.